

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 26, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Mary Voelker
Walter Tarmann

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Town of Merton Board of Adjustment
Larry Kujawski, petitioner, BA04:039
Joan & Dave Fritzler, petitioners, BA04:034
Ken Gauerke, petitioner, BA04:035
Tom & Becky Murel, petitioners, BA04:030
Bruce & Kathy Rosenheimer, petitioners, BA04:029
Kathy Gutenkunst, Attorney, BA04:029
Deb Tarnow, Jahnke & Jahnke, representative of petitioner, BA04:036

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Ms. Voelker *I move we approve the Summary of the Meeting of May 12, 2004.*

The motion was seconded by Mr. Schultz and carried unanimously.

NEW BUSINESS:

BA04:034 DAVID FRITZLER

Ms. Voelker *I make a motion to hold the hearing in abeyance until July 28th or prior, to allow the petitioner's the ability to obtain more accurate information in regards to the location of the septic system and an updated survey.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for **denial**.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property contains 3 acres of land, most of it buildable. There is a significant amount of land available north of the septic system that would accommodate a garage and the garage could possibly be located near the proposed location if reconfigured to comply with the offset, road setback and septic setback requirements. Because there are alternative locations to construct the detached garage, it would not be within the spirit and intent of the Ordinance to approve the requested variance.

BA04:035 KENWOOD AND NANCY GAUERKE

Mr. Tarmann

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report, with the exception of the following changes: Condition No. 1 shall include the following additional language "unless the petitioner provides evidence, which must be reviewed and approved by the Waukesha County Planning and Zoning Division, that the residence has been used as a multi-family residence prior to the passage of the Ordinance". A condition shall be added stating, "The shed must be relocated to a conforming location or removed prior to the issuance of any zoning permits." The reasons shall remain the same as in the Staff Report.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. Prior to the issuance of any zoning permits, the residence must be used as a single-family residence only and will be determined by a site inspection with the Town of Oconomowoc Building Inspector and a staff member from the Waukesha County Parks and Land Use. The proposed addition must be located at least 14.96 ft. from the east lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the east lot line as the overhangs exceed two (2) ft. in width.
2. Prior to the issuance of a zoning permit, a complete set of interior floor plans must be submitted to the Planning and Zoning Division staff for review and approval. The floor plans must include the intended use of each room.

3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the river, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner's proposal, with the recommended conditions, is a reasonable request. The existing residence is only non-conforming to the road setback by 1.25 ft. and non-conforming to the east lot line by 1.71 ft. The addition does not further encroach on either of the setbacks. The existing residence is in good repair and it would be impractical to deny improvements or additions, which do not further encroach on the setbacks since the addition will not negatively impact the neighboring properties or the natural resources in the area. Requiring the petitioner to construct a new residence in a conforming location would only relocate the residence by a couple of feet. Therefore, the petitioner's request is within the spirit and intent of the Ordinance.

BA04:039 LAWRENCE KUJAWSKI

Ms. Voelker

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **denial** of the requested variance from the offset and **approval** of the requested special exception from the shore and floodplain setback, with the following conditions:

1. The deck, patio and any appurtenances including stairways must be located 6 ft. from the side lot lines and 60.9 ft. from the shoreline and 100-yr. floodplain of Okauchee Lake.
2. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the existing structures and proposed deck, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

3. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed deck, patio and stairway does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance from the offset provisions would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioner is proposing to construct the deck, walkway or patio and stairways approximately 1 ft. closer to the lot line than required. Decking, patios and stairways can be reconfigured on the subject parcel to comply with the offset requirements. If the petitioner is not interested in reducing the width of the proposed structures, they could be shifted to the southwest and possibly have the stairway on the southwest side of the deck.

However, approval of the requested special exception from the shore and floodplain setbacks, with the recommended conditions, will allow the petitioner's to upgrade, repair and extend their decking on the shoreline of the residence while not impacting the natural resources or the surrounding properties since the proposed structures would not be located any closer to the shore or floodplain than the existing structure. Approving the petitioner's proposal for a special exception from the shore and floodplain setbacks as conditioned would allow the petitioners a continued and expanded use of a lakeside deck and patio and still maintain the general desirability of the neighborhood and not negatively impact the natural resources in the area. Therefore the proposal with the recommended conditions is within the spirit and intent of the Ordinance.

BA04:029 BRUCE AND KATHLEEN ROSENHEIMER

Ms. Voelker

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The proposed addition shall not extend beyond the footprint of the existing concrete patio as surveyed by Mark Powers, Lake Country Engineering, Inc. revised on January 21, 2004.
3. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner's proposal, with the recommended conditions, is a reasonable request. The existing residence is located within the private road right-of-way, due to a recent 1988 addition to the residence. The residence is a substantial structure, which is unlikely and impractical to move due to its condition. The addition does not further encroach on the private road right-of-way setback, in fact it is significantly further from the private road right-of-way than the existing structure. The existing structure and proposed addition comply with all other District requirements. The proposal also will not negatively impact the general desirability of the neighborhood or the natural resources in the area. Therefore, the petitioner's request is within the spirit and intent of the Ordinance.

BA04:030 THOMAS AND REBECCA MUREL

Mr. Bartholomew

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. The addition to the first floor of the residence shall be reduced to the area encompassed by the

existing covered deck, (127 sq. ft.), and the attached garage shall not exceed 576 sq. ft. in size. This would limit the footprint to 1,627 sq. ft. and allow a maximum of 3,254 sq. ft. or 25.8% floor area ratio. The maximum square footage approved would include an addition above the existing covered deck and 1st floor of the residence, where a 2nd floor does not exist, and allow a 2nd story above the garage.

2. The garage and addition must be located at least 6.46 ft. from the south lot line and 10 ft. from the north lot line as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width.
3. The first floor of the structure shall be placed two feet above the flood protection elevation (901.9 ft. above mean sea level). The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. The driveway leading to the residence shall be at least 899.9 ft. amsl, 100-yr. floodplain elevation, or higher.
4. Prior to the issuance of a zoning permit, a stakeout survey showing the location of the residence, and attached garage, and any other existing structures including appurtenances in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing holding tank is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
7. In order to ensure the construction of the garage and addition does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
8. Upon completion of the attached garage, certification shall be obtained from a registered land

surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Planning Division staff for review and approval.

9. The existing detached garage must be removed prior to the issuance of an Occupancy Permit of the addition and attached garage.
10. Any decking and patio brick adjacent to the lake shall be removed prior to the issuance of a zoning permit for the proposed attached garage and addition.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit the construction of a second story addition and attached garage, elevated above the floodplain and in compliance with the floodplain district requirements. The approval of this request, as recommended, will result in a small lateral expansion into the floodplain, (162 sq. ft.) however, having an attached garage which meets the above requirements will benefit the surrounding area since it will remove a detached structure non-conforming to the road setback and located within the 100-yr. floodplain. Allowing a second story addition will provide additional living area in a structure without a basement, but not impact and not significantly increase the area to be removed from the floodplain. Requiring additions on the second story and within existing impervious surfaces, i.e. the covered deck will help maintain floodplain storage capacity on the property and provide overall additional open space. Finally, the approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance

BA04:036 DOLORES PIPER

Mr. Ward

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report, with the exception of the following changes: Condition No. 4 shall change to read, "A Deed Restriction, drafted by Waukesha County Department of Parks and Land Use and approved by the Waukesha County Corporation Counsel, shall be recorded in Register of Deeds, identifying a vegetative maintenance agreement and deeming the property owner responsible for the structural integrity of the retaining walls. Waukesha County does not have any evidence that the walls were constructed in a stable manner and shall not be responsible if the retaining walls would fail. The petitioner is responsible for paying the recording fees." Condition No. 5 shall be added and read, "A Structural Engineer shall certify that the walls are structurally sound." Add Condition No. 6 requiring a vegetative plan be submitted for review and approval by the Waukesha County Planning and Zoning Division staff prior to the issuance of any permits.

The reasons shall remain the same as in the Staff Report.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. The concrete material and yard waste piled along the shoreline must be removed from the property prior to July 15, 2004. The areas of disturbance shall be restored with vegetation immediately following. An alternative method could be used for the installation of a boat ramp. Prior to installing an alternative method, the petitioner must contact the Wisconsin Department of Natural Resources for approval.
2. Retaining walls numbered 1, 2 and 3 shall be removed prior to August 15, 2004, but not before a Conditional Use Permit is issued for earth-altering activities.
3. A Conditional Use Permit shall be applied for by June 15, 2004 for the related earth-altering activities. A Plan showing the restored grades for the wall removal shall be reviewed as part of the application. A vegetation and restoration plan shall also be submitted for review and approval with the Conditional Use application.
4. A Deed Restriction, drafted by Waukesha County Department of Parks and Land Use, shall be recorded in Register of Deeds, identifying a vegetative maintenance agreement and deeming the property owner responsible for the structural integrity of the retaining walls. Waukesha County does not have any evidence that the walls were constructed in a stable manner and shall not be responsible if the retaining walls would fail.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The retaining walls to be removed in the recommended conditions are not necessary for erosion control and are decorative with unnecessary backfill. They are also located extremely close to the lake with no purpose. The area could be restored without harm to the slope or natural resources in the area and therefore allowing the walls to remain would not be within the spirit and intent of the Ordinance and therefore should not be approved.

The retaining walls that have been approved as part of this application, with the above conditions, are necessary to prevent erosion and runoff from degrading the slope between Park Drive and Lake Keesus and also preventing sedimentation from entering Lake Keesus, which could negatively impact the water quality, the natural habitat and resources of Lake Keesus. Waukesha County cannot, however, ensure that the walls will not fail over time since a Structural Engineer did not review the proposed construction details. Since the retaining walls are improving the integrity of the slope and natural resources in the area and the petitioner is willing to continue vegetating the retaining walls to give the property an aesthetic appearance from the lake, approving the walls, as conditioned, would be within the spirit and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

NONE

ADJOURNMENT:

Ms. Voelker

I move we adjourn this meeting at 9:45 p.m.

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment

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